

Implications of U.S. Army Corps of Engineers Levee Encroachment Rules

Summary: In August 2012 the U.S. Army Corps of Engineers (USACE) placed 13 Delta levee systems into “inactive” status with respect to the Rehabilitation and Inspection Program (RIP) of Public Law 84-99 (PL 84-99). The purpose of this information item is to brief the Council about how this action impacts disaster recovery assistance in the event of a flood emergency, as well as whether or not there are any potential impacts on FEMA levee accreditation for these levees.

Background

In 2009 the U.S. Army Corps of Engineers (USACE) and the Central Valley Flood Prevention Board (CVFPB) jointly developed the Central Valley Flood System Improvement Framework (Framework). This was an interim agreement that provided guidance on levee maintenance requirements, with the anticipation that the 2012 Central Valley Flood Protection Plan (CVFPP) would address specific concerns regarding encroachments and/or erosion expressed by the USACE about seventeen levee systems in the Central Valley. The Framework allowed these levee systems to remain active within the Rehabilitation and Inspection Program (RIP) until the CVFPP was adopted. However, the CVFPP did not address these concerns to the satisfaction of the USACE. As a result, the USACE deemed the seventeen levee systems as no longer in compliance with its rules to carry out PL 84-99, and therefore inactive. Thirteen of these levee systems are located all or in part within the Delta (see Attachment 1 and Attachment 2). They include:

- levees along the east bank of the Sacramento River from the confluence with the American River to Snodgrass Slough, which protect North Natomas, downtown Sacramento and the Pocket area, as well as the unincorporated Delta communities of Freeport and Hood
- levees along Bear Creek, Mormon Slough and Duck Creek, which protect the northern and southwestern parts of Stockton

What are the consequences of this action?

“Inactive” status means these levee systems would not be eligible for rehabilitation assistance from USACE under PL 84-99 in the event of a flood emergency. However, flood fighting assistance is still available from the USACE for levee systems that have “inactive status” within the RIP.

This action is distinct from the accreditation program carried out by the Federal Emergency Management Agency’s (FEMA). FEMA “accredits” levees as providing adequate protection from the 100-year base flood. This accreditation is based on a

“certification” provided by a registered engineer or federal agency (not including USACE) that designs levees. The accreditation criteria accepted by FEMA are set forth in 44 CFR 65.10, and are not the same as the USACE’s RIP eligibility inspection criteria.

There may be ways in which the USACE action might indirectly affect the FEMA process. Today the Council will hear from representatives of USACE, FEMA and CVFPB on how the action by USACE will affect Delta levees. The panelists will focus on the following discussion items:

- What were the deficiencies that led to the USACE’s August 2012 determination to deem seventeen levee systems “inactive” per PL 84-99?
- How does suspension from the RIP affect the floodplain status for areas within the Delta?
- How will the USACE work with affected communities to see that they can return to “active” status within the RIP?
- How does the CVFPP plan to address the issues raised by the USACE in order to allow the suspended levee systems back into “active” status within the RIP?
- What are the differences between the USACE RIP levee inspection criteria, and FEMA’s accreditation criteria?
- What process does FEMA envision for remapping Delta floodplains?
- How will this remapping effort affect flood insurance requirements?
- In the event of a flood disaster, what federal assistance will be available to communities and properties currently behind levees suspended from the RIP?

List of Attachments

Attachment 1: Map of Levees Affected by the Expiration of the Framework

Attachment 2: August 21, 2012 Letter from USACE to CVFPB

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